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13 MICHAEL DE LEON

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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 MICHAEL DE LEON,

20 v.
21 Plaintiff,

22 J. M. EQUIPMENT COMPANY,
23 INC., a California corporation;
24 and DOES 1 to 50, inclusive,

25 Defendants.

26 **Case No.: 2:23-cv-00717-KJN**

27 **FIRST AMENDED COMPLAINT FOR:**

28

- (1) **DISABILITY DISCRIMINATION
IN VIOLATION OF FEHA**
- (2) **FAILURE TO PROVIDE
REASONABLE
ACCOMMODATION IN
VIOLATION OF FEHA**
- (3) **FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF FEHA**
- (4) **DISCRIMINATION ON THE
BASIS OF AGE IN VIOLATION
OF FEHA**
- (5) **RETALIATION IN VIOLATION
OF FEHA**
- (6) **FAILURE TO PREVENT
DISCRIMINATION,
HARASSMENT AND/OR
RETALIATION IN VIOLATION
OF FEHA**
- (7) **VIOLATION OF CFRA RIGHTS**
- (8) **CFRA RIGHTS RETALIATION**

(9) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(10) NEGLIGENCE, SUPERVISION, AND/OR RETENTION

JURY TRIAL DEMANDED

Plaintiff, MICHAEL DE LEON, a California resident (hereinafter, "Plaintiff"), files this First Amended Complaint against Defendants J. M. EQUIPMENT COMPANY, INC., a California Stock Corporation (hereinafter "JME"); and DOES 1 to 50, inclusive (each a "Defendant," and collectively, "Defendants") (Plaintiff and Defendants shall each be referred to as a "Party", and collectively as, the "Parties"), and demanding a trial by jury, avers as follows:

PARTIES

1. Plaintiff MICHAEL DE LEON, at all relevant times mentioned in this complaint, was a resident of the County of Fresno, California and the County of Madera, California.

2. Defendant JME is, and at all relevant times was, a California corporation, registered under the laws of the State of California with its principal place of business located at 321 Spreckels Avenue, Manteca, CA 95336.

3. Defendants DOES 1 through 50 are sued under fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the defendants sued under fictitious names is in some

1 manner responsible for the wrongs and damages alleged below, in so acting was
2 functioning as the agent, servant, partner, and employee of the Defendant, and in
3 taking the actions mentioned below was acting within the course and scope of their
4 authority as such agent, servant, partner, and employee, with the permission and
5 consent of the Defendant. The named Defendants and Doe Defendants are sometimes
6 hereafter referred to, collectively and/or individually, as "Defendant."

7 4. Each reference in this Complaint to "Defendant" and/or "Defendants"
8 refers to JME, and its managers, agents, employees and/or supervisors; and also
9 refers to all Doe Defendants.

10 5. Plaintiff is informed and believes and thereon alleges that each and all
11 of the acts and omissions alleged herein were performed by, and/or are attributable
12 to, all Defendants, each acting as agents and/or employees, and/or under the direction
13 and control of each of the other Defendants, and that said acts and failures to act were
14 within the course and scope of said agency, employment and/or direction and control.
15 Plaintiff is informed and believes and thereon alleges that at all times material hereto
16 Defendants were and are the agents of each other.

JURISDICTION AND VENUE

17 6. Sacramento County Superior Court has personal jurisdiction over
18 Defendant because Defendant resides and/or regularly transacts business in
19 California and because Defendants' obligations and liability arise therein.

20 7. Venue is proper in Sacramento County Superior Court and this action
21 was originally and properly filed in the County of Sacramento because Defendant
22 regularly transacts business in the County of Sacramento, and because Defendants'
23 obligations and liability arise therein. Defendant maintains offices in the County of
24 Sacramento, regularly transacts business there, and has agents, employees and/or
25 supervisors within the County of Sacramento. Defendants removed this action to the
26 California Eastern District Court of the United States where Plaintiff now files his
27 First Amended Complaint for Damages.

ADMINISTRATIVE PREREQUISITES

8. On February 14, 2023, Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”) against Defendant alleging facts upon which this Complaint is based.

9. On February 14, 2023, Plaintiff received an immediate right-to-sue letter from the DFEH. Plaintiff has thus exhausted his administrative prerequisites to filing this civil action.

FACTS COMMON TO ALL COUNTS

1. *Plaintiff's hiring:* In or around March of 1993, Plaintiff was hired by JME as a service technician. From the time of hire until approximately 1997, Plaintiff worked in Defendant's shop location in Fresno.

2. As a service technician, Plaintiff was responsible for the inspection, servicing, maintenance, repair, and troubleshooting of forklifts, agricultural equipment, and other machinery. Plaintiff was also responsible for preparing equipment for rental and ensuring compliance with safety and cleanliness standards.

3. At all relevant times, Plaintiff was an exemplary employee who went above and beyond to meet the needs of JME. Plaintiff received numerous performance and attendance awards throughout the course of his employment with JME.

4. In 1997, Plaintiff transitioned to the position of a road service mechanic. In that role, Plaintiff traveled in the company service van to various industrial and commercial locations to perform inspection and repair services.

5. In or around 1999, Plaintiff began developing knee and hip pain due to the strenuous demands of his job. The physical strain caused Plaintiff to walk slowly with a limp and a hunched back.

6. During this time, Plaintiff attended doctor's appointments approximately every two months for continued monitoring of his deteriorating hip and knee. Plaintiff diligently provided his supervisors with advance notice of his

1 doctor's appointments.

2 7. In or around 2014, JME supervisors began make age-based derogatory
3 remarks directed at Plaintiff. For instance, Plaintiff's supervisor Mr. Taylor said to
4 Plaintiff that he was not suited to be a road mechanic because "***that's a young man's***
5 ***job out there in the field.***"

6 8. In or around 2015, JME demoted Plaintiff from road mechanic to shop
7 mechanic and hired Kyle Neuberger, a 26-year-old, to replace Plaintiff in his former
8 role.

9 9. In or around 2017, Plaintiff informed his supervisor Mr. Taylor that he
10 was looking to undergo surgery for his hip sometime in the future.

11 10. In or around 2019, with his hip and knee further deteriorating, Plaintiff
12 explained the nature of his physical constraints with his supervisor Mr. Taylor and
13 requested accommodation in the form of light duty. Mr. Taylor denied Plaintiff's
14 request and callously responded: "***Light duty isn't an option. You can either work,***
15 ***or you can't.***"

16 11. In or around August of 2021, Plaintiff notified his supervisors Mike
17 Koop ("Mr. Koop") and Matt Taylor ("Mr. Taylor") that, in or around October of
18 2021, he would need to take a temporary medical leave of absence to undergo hip
19 replacement surgery for his deteriorating hip. Plaintiff informed them he anticipated
20 needing approximately two months following the surgery to recover.

21 12. *Plaintiff's termination:* On or around October 1, 2021, just days before
22 Plaintiff intended to begin medical leave for his scheduled hip replacement surgery,
23 JME terminated his employment after Plaintiff dedicated nearly thirty (30) years of
24 his life to serving Defendants. JME's stated reason for Plaintiff's termination was a
25 purported downturn in business and lack of work available for him to perform.

26 13. Based on information and belief, the only other employee whose
27 employment was terminated was Randy Yoshida, approximately 62 years old at that
28 time.

1 14. Shortly after terminating Plaintiff, in a blatant contradiction to JME's
2 alleged shortage of work, JME requested existing employees to work overtime and
3 hired additional employees to meet the growing demands of available jobs.

4 15. *Economic damages:* As a consequence of Defendants' conduct, Plaintiff
5 has suffered and will suffer harm, including lost past and future income and
6 employment benefits, damage to his career, and lost wages, unpaid expenses, and
7 penalties, as well as interest on unpaid wages at the legal rate from and after each
8 payday on which those wages should have been paid, in a sum to be proven at trial.

9 16. *Non-economic damages:* Plaintiff also suffered physically and
10 emotionally as a consequence of Defendants' treatment. Plaintiff now suffers from
11 mental and emotional symptoms including but not limited to depression, anxiety,
12 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
13 financial insecurity, mood swings, and mental pain and anguish, necessitating mental
14 health treatment.

15 17. *Malice:* Defendants' conduct was committed with malice within the
16 meaning of California Civil Code section 3294, including that (a) Defendant acted
17 with intent to cause injury to Plaintiff and/or acted with reckless disregard for
18 Plaintiff's injury, including by termination Plaintiff's employment and/or taking
19 other adverse job actions against Plaintiff because of his disability and engagement
20 in protected activity, and/or (b) Defendants' conduct was despicable and committed
21 in willful and conscious disregard of Plaintiff's rights, health, and safety, including
22 Plaintiff's right to be free of discrimination, harassment, retaliation and wrongful
23 employment termination.

24 18. *Oppression:* In addition, and/or alternatively, Defendants' conduct was
25 committed with oppression within the meaning of California Civil Code section
26 3294, including that Defendants' actions against Plaintiff because of his disability
27 and engagement in protected activity were "despicable" and subjected Plaintiff to
28 cruel and unjust hardship, in knowing disregard of Plaintiff's rights to a workplace

1 free of discrimination, harassment, retaliation and wrongful employment termination.

2 19. *Fraud:* In addition, and/or alternatively, Defendants' conduct as alleged
3 was fraudulent within the meaning of California Civil Code section 3294, including
4 that Defendant asserted false (pretextual) grounds for employment termination and/or
5 other adverse job actions, thereby to cause Plaintiff hardship and deprive him of legal
6 rights.

7 20. *Attorneys' Fees:* Due to the acts of Defendant, Plaintiff has incurred and
8 continues to incur legal expenses and attorney's fees.

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FIRST CAUSE OF ACTION

DISABILITY DISCRIMINATION IN VIOLATION OF FEHA

(Cal. Gov. Code § 12940(a)))

(Against Defendants JME, and DOES 1 through 50, inclusive)

21. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

22. Under the FEHA, it is unlawful for an employer to discriminate against an employee on the basis of the employee's disability and/or medical condition. Cal. Gov't Code § 12940(a).

23. At all relevant times, Defendant JME was an employer within the meaning of FEHA because Defendant employs more than five persons. (Cal. Gov't Code § 12926(d)).

24. As such, Defendant was barred from discriminating and retaliating against employees on the basis of a physical or mental disability. Cal. Gov't. Code § 12940. Defendant was also required to take all reasonable steps to prevent discrimination from occurring, as set forth in Government Code sections 12940 *et seq.*

25. At all relevant times, Plaintiff was an employee of Defendant and a member of a protected class for purposes of the FEHA. Plaintiff suffered from a disability and/or serious medical condition, as defined by FEHA, which affected his physical capacity and limited his major life activities, including but not limited to working, and as such, Plaintiff is protected from discrimination and retaliation based on his disability and/or medical conditions.

26. At all relevant times, Defendant was aware that Plaintiff suffered from a disability and/or medical condition because Plaintiff was visibly hunched over and limping while struggling to walk. Moreover, Plaintiff specifically reported said disability and/or medical condition directly to his supervisors and requested accommodation.

1 27. At all relevant times, Plaintiff was able to perform the essential duties
2 of his position, either with or without reasonable accommodations for his disability
3 and/or medical condition.

4 28. Defendant discriminated against Plaintiff in violation of FEHA by
5 committing unlawful adverse employment practices including but not limited to
6 creating an overall hostile work environment; denying Plaintiff equal terms,
7 conditions, and/or privileges of employment enjoyed by other employees; subjecting
8 Plaintiff to offensive age-based discriminatory remarks; demoting Plaintiff; replacing
9 Plaintiff in his position with a substantially younger employee; failing to engage in a
10 good faith interactive process to determine reasonable accommodations that would
11 allow Plaintiff to accomplish the essential functions of his job, refusing to
12 accommodate Plaintiff's disability and/or medical condition; failing to remedy or
13 prevent discrimination and retaliation; and wrongfully terminating Plaintiff's
14 employment for pretextual reasons in violation of public policy.

15 29. Plaintiff is informed and believes, and thereon alleges that Plaintiff's
16 disability/medical condition was a substantial motivating reason for Defendants'
17 decision to terminate Plaintiff.

18 30. Defendants' wrongful conduct was a substantial factor in causing
19 Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has
20 been damaged in an amount according to proof at the time of trial.

21 31. As a direct and proximate result of Defendants' conduct, Plaintiff has
22 suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
23 path opportunities and other out of pocket expenses in an amount according to proof
24 at the time of trial.

25 32. As a direct and proximate result of Defendants' aforementioned acts,
26 Plaintiff has also suffered and/or incurred general damages for depression, anxiety,
27 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
28 financial insecurity, mood swings, and mental pain and anguish, in an amount

according to proof at the time of trial.

33. Plaintiff also continues to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial which fees and expenses are recoverable pursuant to Gov't. Code section 12900 *et seq.*

34. The above-described actions were perpetrated and/or ratified by managing agents, officers or directors of Defendant. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including that Defendant asserted false (pretextual) grounds for terminating Plaintiff's employment. Such acts were deliberate, intentional, despicable in character and warrant the imposition of punitive damages within the meaning of California Civil Code section 3294 and in a sum sufficient to punish and deter Defendants' future conduct.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF FEHA (Cal. Gov't Code § 12940(m))

(Against Defendants JME, and DOES 1 through 50, inclusive)

35. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

36. At all times herein mentioned, FEHA, Government Code section 12940(m) was in full force and effect and was binding on Defendant. This statute requires Defendant to provide reasonable accommodations to known disabled employees.

37. At all relevant times, Defendant was aware that Plaintiff suffered from a disability and/or medical condition because Plaintiff was visibly hunched over and limping while struggling to walk. Moreover, Plaintiff specifically reported said disability and/or medical condition directly to his supervisors and requested accommodation.

38. At all relevant times, Plaintiff was able to perform the essential duties

1 of his position with reasonable accommodations for his disability and/or medical
2 condition.

3 39. Defendant failed to provide reasonable accommodation for Plaintiff's
4 disability and/or medical condition despite Plaintiff's requests for accommodation.

5 40. Instead of accommodating Plaintiff, Defendant terminated Plaintiff's
6 employment at least in part due to his disability and/or medical condition and his
7 requests for accommodation.

8 41. Defendants' failure to reasonably accommodate Plaintiff was a
9 substantial factor in causing Plaintiff's harm. As a direct and proximate result of
10 Defendants' conduct, Plaintiff has been damaged in an amount according to proof at
11 the time of trial.

12 42. As a direct and proximate result of Defendants' conduct, Plaintiff has
13 suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
14 path opportunities and other out of pocket expenses in an amount according to proof
15 at the time of trial.

16 43. As a direct and proximate result of Defendants' aforementioned acts,
17 Plaintiff has also suffered and/or incurred general damages for depression, anxiety,
18 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
19 financial insecurity, mood swings, and mental pain and anguish, in an amount
20 according to proof at the time of trial.

21 44. Plaintiff also continues to incur attorneys' fees and legal expenses in an
22 amount according to proof at the time of trial which fees and expenses are recoverable
23 pursuant to Gov't. Code section 12900 *et seq.*

24 45. The above-described actions were perpetrated and/or ratified by
25 managing agents, officers or directors of Defendant. These acts were done with
26 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including
27 that Defendant asserted false (pretextual) grounds for terminating Plaintiff's
28 employment. Such acts were deliberate, intentional, despicable in character and

1 warrant the imposition of punitive damages within the meaning of California Civil
2 Code section 3294 and in a sum sufficient to punish and deter Defendants' future
3 conduct.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN**
6 **VIOLATION OF FEHA (Cal. Gov't Code § 12940(n))**

7 (Against Defendants JME, and DOES 1 through 50, inclusive)

8 46. Plaintiff re-alleges and incorporates by reference, as though fully set
9 forth herein, all preceding paragraphs of this Complaint.

10 47. At all times herein mentioned, FEHA, Government Code section
11 12940(n), was in full force and effect and was binding on Defendant. This statute
12 requires employers to engage in a timely, good faith, interactive process to determine
13 reasonable accommodation for an employee with a known physical disability or
14 known medical condition. Cal. Gov't Code § 12940(n).

15 48. At all relevant times, Defendant was aware that Plaintiff suffered from
16 a disability and/or medical condition because Plaintiff was visibly hunched over and
17 limping while struggling to walk. Moreover, Plaintiff specifically reported said
18 disability and/or medical condition directly to his supervisors and requested
19 accommodation.

20 49. At all relevant times, Plaintiff was willing to participate in an interactive
21 process to determine whether reasonable accommodations could be made to enable
22 him to perform the essential functions of his job.

23 50. Defendant wholly failed to engage in a timely, good-faith interactive
24 process with Plaintiff to accommodate his known disability. Instead, Defendant
25 refused to reasonably accommodate Plaintiff and wrongfully terminated his
26 employment in part because of his disability and/or medical condition and his
27 requests for accommodation.

28 51. Defendants' failure to engage in a good faith interactive process was a

1 substantial factor in causing Plaintiff's harm. As a direct and proximate result of
2 Defendants' conduct, Plaintiff has been damaged in an amount according to proof at
3 the time of trial.

4 52. As a direct and proximate result of Defendants' conduct, Plaintiff has
5 suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
6 path opportunities and other out of pocket expenses in an amount according to proof
7 at the time of trial.

8 53. As a direct and proximate result of Defendants' aforementioned acts,
9 Plaintiff has also suffered and/or incurred general damages for depression, anxiety,
10 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
11 financial insecurity, mood swings, and mental pain and anguish, in an amount
12 according to proof at the time of trial.

13 54. Plaintiff also continues to incur attorneys' fees and legal expenses in an
14 amount according to proof at the time of trial which fees and expenses are recoverable
15 pursuant to Gov't. Code section 12900 *et seq.*

16 55. The above-described actions were perpetrated and/or ratified by
17 managing agents, officers or directors of Defendant. These acts were done with
18 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including
19 that Defendant asserted false (pretextual) grounds for terminating Plaintiff's
20 employment. Such acts were deliberate, intentional, despicable in character and
21 warrant the imposition of punitive damages within the meaning of California Civil
22 Code section 3294 and in a sum sufficient to punish and deter Defendants' future
23 conduct.

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FOURTH CAUSE OF ACTION

AGE DISCRIMINATION IN VIOLATION OF FEHA (Cal. Gov. Code §12940(a))

(Against Defendant JME and DOES 1 through 50, inclusive)

56. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

57. At all relevant times mentioned herein, Plaintiff was an employee of Defendant and a member of a protected class for purposes of the FEHA, in that he is over the age of 40.

58. At all relevant times to this Complaint, Defendant JME was an employer covered by FEHA because it employs more than five persons. (Cal. Gov't Code § 12926(d)).

59. Under the FEHA, it is unlawful for an employer to discriminate against an employee in terms, conditions, or privileges of employment based upon the employee's age. (Cal. Gov't Code § 12940(a)).

60. Defendants' conduct, as alleged, violated FEHA, and Defendant committed unlawful adverse employment practices, including but not limited to creating an overall hostile work environment; denying Plaintiff equal terms, conditions, and/or privileges of employment enjoyed by other employees; subjecting Plaintiff to offensive age-based discriminatory remarks; demoting Plaintiff; replacing Plaintiff in his position with a substantially younger employee; failing to engage in a good faith interactive process to determine reasonable accommodations that would allow Plaintiff to accomplish the essential functions of his job, refusing to accommodate Plaintiff's disability and/or medical condition; failing to remedy or prevent discrimination and retaliation; and wrongfully terminating Plaintiff's employment for pretextual reasons in violation of public policy.

61. Plaintiff is informed and believes, and thereon alleges that his age was a substantial motivating reason for Defendants' unlawful conduct.

62. Defendants' unlawful conduct was a substantial factor in causing Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has been damaged in an amount according to proof at the time of trial.

63. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial losses in wages, bonuses, benefits, career path opportunities and other out of pocket expenses in an amount according to proof at the time of trial.

64. As a direct and proximate result of Defendants' aforementioned acts, Plaintiff has also suffered and/or incurred general damages for depression, anxiety, insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue, financial insecurity, mood swings, and mental pain and anguish, in an amount according to proof at the time of trial.

65. Plaintiff also continues to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial which fees and expenses are recoverable pursuant to Gov't. Code section 12900 *et seq.*

66. Defendants' misconduct was committed intentionally, in a malicious, despicable, oppressive manner, entitling Plaintiff to punitive damages against Defendants.

FIFTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF FEHA

(Cal. Gov. Code § 12940(h))

(Against Defendants JME, and DOES 1 through 50, inclusive)

67. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

68. The FEHA makes it unlawful for an employer to retaliate against an employee for opposing any practices forbidden under California Gov't. Code sections 12900 through 12966 or because the employee has filed a complaint, testified, or assisted in any proceedings under the FEHA. Cal. Gov't Code §12940(h).

1 The FEHA also makes it unlawful to retaliate or otherwise discriminate against an
2 employee for requesting an accommodation for a disability, regardless of whether
3 the request was granted. Cal. Gov't Code §12940(m)(2).

4 69. Plaintiff engaged in legally protected behavior on multiple occasions,
5 including but not limited to, requesting reasonable accommodations for his disability
6 and/or medical condition and taking protected medical leave.

7 70. Plaintiff is informed and believes and thereon alleges that as a
8 consequence of his engaging in legally protected activity, Defendant retaliated
9 against Plaintiff by, among other things: creating an overall hostile work
10 environment; denying Plaintiff equal terms, conditions, and/or privileges of
11 employment enjoyed by other employees; subjecting Plaintiff to offensive age-based
12 discriminatory remarks; demoting Plaintiff; replacing Plaintiff in his position with a
13 substantially younger employee; failing to engage in a good faith interactive process
14 to determine reasonable accommodations that would allow Plaintiff to accomplish
15 the essential functions of his job, refusing to accommodate Plaintiff's disability
16 and/or medical condition; failing to remedy or prevent discrimination and retaliation;
17 and wrongfully terminating Plaintiff's employment for pretextual reasons in violation
18 of public policy.

19 71. Plaintiff's protected activity was a substantial motivating reason for
20 Defendants' adverse employment actions including but not limited to the wrongful
21 termination of his employment.

22 72. Defendants' retaliatory conduct was a substantial factor in causing
23 Plaintiff harm. As a direct and proximate result of Defendants' retaliatory conduct,
24 Plaintiff has been damaged in an amount according to proof at the time of trial.

25 73. As a direct and proximate result of Defendants' conduct, Plaintiff has
26 suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
27 path opportunities and other out of pocket expenses in an amount according to proof
28 at the time of trial.

74. As a direct and proximate result of Defendants' aforementioned acts, Plaintiff has also suffered and/or incurred general damages for depression, anxiety, insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue, financial insecurity, mood swings, and mental pain and anguish, in an amount according to proof at the time of trial.

75. Plaintiff also continues to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial which fees and expenses are recoverable pursuant to Gov't. Code section 12900 *et seq.*

76. The above-described actions were perpetrated and/or ratified by managing agents, officers or directors of Defendant. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including that Defendant asserted false (pretextual) grounds for terminating Plaintiff's employment. Such acts were deliberate, intentional, despicable in character and warrant the imposition of punitive damages within the meaning of California Civil Code section 3294 and in a sum sufficient to punish and deter Defendants' future conduct.

SIXTH CAUSE OF ACTION

**FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND/OR
RETALIATION IN VIOLATION OF FEHA (Cal. Gov. Code §12940(k))**

(Against Defendants JME; and DOES 1 through 50)

77. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

78. At all times herein mentioned, FEHA, Government Code section 12940(k), was in full force and effect and was binding on Defendant. This statute requires employers to take all reasonable steps necessary to prevent harassment, discrimination and retaliation from occurring.

79. As explained herein, Plaintiff was subjected to harassment, discrimination and retaliation in the course of his employment with Defendant.

1 80. Defendant violated FEHA with regard to Plaintiff when Defendant
2 failed to take all reasonable steps necessary to investigate and prevent unlawful
3 discrimination and harassment from occurring, and to remedy such discrimination.

4 81. Defendants' failure to take all reasonable steps to investigate and
5 prevent unlawful discrimination and harassment was a substantial factor in causing
6 Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has
7 been damaged in an amount according to proof at the time of trial.

8 82. As a direct and proximate result of Defendants' conduct, Plaintiff has
9 suffered and continues to suffer substantial losses in wages, benefits, career path
10 opportunities, and other out of pocket expenses in an amount according to proof at
11 the time of trial.

12 83. As a direct and proximate result of defendants' aforementioned acts,
13 Plaintiff has also suffered and/or incurred general damages for limited to depression,
14 anxiety, insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness,
15 fatigue, financial insecurity, mood swings, and mental pain and anguish, in an
16 amount according to proof at the time of trial.

17 84. Plaintiff also continues to incur attorneys' fees and legal expenses in an
18 amount according to proof at the time of trial which fees and expenses are recoverable
19 pursuant to Gov't. Code section 12900 *et seq.*

20 85. The above-described actions were perpetrated and/or ratified by
21 managing agents, officers or directors of all the Defendant. These acts were done
22 with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights,
23 including that Defendant asserted false (pretextual) grounds for terminating
24 Plaintiff's employment. Such acts were despicable in character and warrant the
25 imposition of punitive damages within the meaning of California Civil Code section
26 3294 and in a sum sufficient to punish and deter Defendants' future conduct.

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SEVENTH CAUSE OF ACTION
VIOLATION OF CFRA RIGHTS
(Cal. Gov. Code § 12945.1 *et seq.*)

(Against Defendants JME, and DOES 1 through 50, inclusive)

86. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

87. The California Family Rights Act (“CFRA”) is a portion of FEHA that provides protections to employees needing family leave or medical leave. CFRA provides that it shall be an unlawful employment practice for any employer to deny an employee, returning from family care or medical leave, “a guarantee of employment in the same or a comparable position upon the termination of the leave.” Cal. Gov’t. Code § 12945.2(a), (t).

88. At all relevant times, Defendant JME was an employer covered by CFRA and was prohibited from discrimination and retaliation in employment on the basis of an employee taking protected leave, and interference with an employee's right to take such a leave.

89. At all relevant times, Plaintiff was eligible for medical leave pursuant to FEHA and/or CFRA. Plaintiff was an employee of Defendant. Defendant employed 5 or more employees. At the time Plaintiff intended to take medical leave, Plaintiff had more than 12 months of service with Defendant and had worked at least 1250 hours for Defendant during the previous 12 months. At the time Plaintiff attempted to take medical leave, Plaintiff had taken no more than 12 weeks of family care and medical leave during the relevant 12-month period.

90. Plaintiff requested leave for his own serious health condition and/or disability.

91. Plaintiff provided reasonable notice to Defendant of his need for leave, including its expected time and length.

92. In lieu of allowing Plaintiff to take protected medical leave, Defendant

1 terminated Plaintiff's employment. As such, Defendant refused to grant Plaintiff's
2 request for medical leave and precluded him from returning to the same or a
3 comparable job by terminating his employment in violation of Plaintiff's rights under
4 CFRA and FEHA.

5 93. Defendants' conduct was a substantial factor in causing Plaintiff's harm.
6 As a direct and proximate result of Defendants' conduct, Plaintiff has been damaged
7 in an amount according to proof at the time of trial.

8 94. As a direct and proximate result of Defendants' conduct, Plaintiff has
9 suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
10 path opportunities and other out of pocket expenses in an amount according to proof
11 at the time of trial.

12 95. As a direct and proximate result of Defendants' aforementioned acts,
13 Plaintiff has also suffered and/or incurred general damages for depression, anxiety,
14 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
15 financial insecurity, mood swings, and mental pain and anguish, in an amount
16 according to proof at the time of trial.

17 96. Plaintiff also continues to incur attorneys' fees and legal expenses in an
18 amount according to proof at the time of trial which fees and expenses are recoverable
19 pursuant to Gov't. Code section 12900 *et seq.*

20 97. The above-described actions were perpetrated and/or ratified by
21 managing agents, officers or directors of Defendant. These acts were done with
22 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including
23 that Defendant asserted false (pretextual) grounds for terminating Plaintiff's
24 employment. Such acts were deliberate, intentional, despicable in character and
25 warrant the imposition of punitive damages within the meaning of California Civil
26 Code section 3294 and in a sum sufficient to punish and deter Defendants' future
27 conduct.

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EIGHTH CAUSE OF ACTION
CFRA RIGHTS RETALIATION
(Cal. Gov. Code § 12945.2(l), (t))

(Against Defendants JME, and DOES 1 through 50, inclusive)

98. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all preceding paragraphs of this Complaint.

99. At all relevant times, Plaintiff was eligible for medical leave pursuant to the CFRA.

100. Plaintiff engaged in legally protected behavior when he exercised his right to take medical leave for a qualifying CFRA purpose, requested reasonable work accommodations, and more.

101. Plaintiff is informed and believes and thereon alleges that as a consequence of his engaging in legally protected activity, Defendant retaliated against Plaintiff by, among other things: creating an overall hostile work environment; denying Plaintiff equal terms, conditions, and/or privileges of employment enjoyed by other employees; subjecting Plaintiff to offensive age-based discriminatory remarks; demoting Plaintiff; replacing Plaintiff in his position with a substantially younger employee; failing to engage in a good faith interactive process to determine reasonable accommodations that would allow Plaintiff to accomplish the essential functions of his job, refusing to accommodate Plaintiff's disability and/or medical condition; failing to remedy or prevent discrimination and retaliation; and wrongfully terminating Plaintiff's employment for pretextual reasons in violation of public policy.

102. Plaintiff's protected activity was a substantial motivating reason for Defendants' decision to take adverse employment action(s) against Plaintiff.

103. Defendants' retaliatory conduct was a substantial factor in causing Plaintiff harm. As a direct and proximate result of Defendants' retaliatory conduct, Plaintiff has been damaged in an amount according to proof at the time of trial.

104. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial losses in wages, bonuses, benefits, career path opportunities and other out of pocket expenses in an amount according to proof at the time of trial.

105. As a direct and proximate result of Defendants' aforementioned acts, Plaintiff has also suffered and/or incurred general damages for depression, anxiety, insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue, financial insecurity, mood swings, and mental pain and anguish, in an amount according to proof at the time of trial.

106. Plaintiff also continues to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial which fees and expenses are recoverable pursuant to Gov't. Code section 12900 *et seq.*

107. The above-described actions were perpetrated and/or ratified by managing agents, officers or directors of Defendant. These acts were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights, including that Defendant asserted false (pretextual) grounds for terminating Plaintiff's employment. Such acts were deliberate, intentional, despicable in character and warrant the imposition of punitive damages within the meaning of California Civil Code section 3294 and in a sum sufficient to punish and deter Defendants' future conduct.

NINTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against Defendants JME, and DOES 1 through 50, inclusive)

108. Plaintiff re-alleges and incorporates by reference the matters alleged in the foregoing paragraphs of this Complaint as if fully set forth herein.

109. Plaintiff's employment was terminated for pretextual reasons and as a result of Defendants' violation of fundamental public policies. It is against fundamental California public policy to discriminate against and/or retaliate against

1 an employee on the basis of the employee's disability and/or medical condition. It is
2 also against California public policy to discharge an employee for engaging in
3 protected activity, including requesting accommodation.

4 Plaintiff's disability and requests for accommodation, and taking of
5 protected medical leave, among other things, were substantial motivating reasons for
6 Plaintiff's termination.

7 Defendants' unlawful conduct was a substantial factor in causing
8 Plaintiff harm. As a direct and proximate result of Defendants' conduct, Plaintiff has
9 suffered and continues to suffer substantial losses in wages, benefits, career path
10 opportunities, and other out of pocket expenses in an amount according to proof at
11 the time of trial.

12 As a direct and proximate result of Defendants' conduct, Plaintiff has
13 also suffered and/or incurred general damages for depression, anxiety, insomnia, loss
14 of appetite, hopelessness, humiliation, stress, restlessness, fatigue, financial
15 insecurity, mood swings, and mental pain and anguish, in an amount according to
16 proof at the time of trial.

17 The above-described actions were perpetrated and/or ratified by
18 managing agents, officers or directors of all the Defendant. These acts were done
19 with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights,
20 including that Defendant asserted false (pretextual) grounds for terminating
21 Plaintiff's employment. Such acts were despicable in character and warrant the
22 imposition of punitive damages within the meaning of California Civil Code section
23 3294 and in a sum sufficient to punish and deter Defendants' future conduct.

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TENTH CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, AND/OR SUPERVISION

(*Doe v. Capital Cities* (1996) 50 Cal. App. 4th 1038)

(Against Defendants JME, and DOES 1-50, inclusive)

114. Plaintiff re-alleges and incorporates by reference the matters alleged in
the foregoing paragraphs of this Complaint as if fully set forth herein.

115. Defendant owed a duty of care to Plaintiff to appoint, hire, retain, and
supervise persons who would not engage in retaliatory, harassing, or discriminatory
conduct. Defendant also owed a duty of care to Plaintiff not to retain managers or
employees who would discriminate against, harass, or retaliate against employees
based on their age or disability and for engaging in protected activities.

116. Defendant breached these duties when they hired, supervised, and/or
retained Defendants Mr. Koop and Mr. Taylor, who were unfit to perform the work
for which they were hired when they refused to accommodate Plaintiff's disability.

117. Defendant knew or should have known of Mr. Koop and Mr. Taylor's
misconduct and refusal to accommodate Plaintiff's disability created a particular risk
of causing Plaintiff further emotional distress and/or distress of other employees.

118. Defendants Mr. Koop and Mr. Taylor's unfitness for their managerial
roles harmed Plaintiff.

119. Defendant JME's negligence in retaining Mr. Koop and Mr. Taylor was
a factor in causing Plaintiff's harm.

120. As a direct and proximate result of Defendants' conduct, Plaintiff has
suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
path opportunities and other out of pocket expenses in an amount according to proof
at the time of trial.

121. As a direct and proximate result of Defendants' conduct, Plaintiff has
suffered and continues to suffer substantial losses in wages, bonuses, benefits, career
path opportunities and other out of pocket expenses in an amount according to proof

1 at the time of trial.

2 122. As a direct and proximate result of Defendants' aforementioned acts,
3 Plaintiff has also suffered and/or incurred general damages for depression, anxiety,
4 insomnia, loss of appetite, hopelessness, humiliation, stress, restlessness, fatigue,
5 financial insecurity, mood swings, and mental pain and anguish, in an amount
6 according to proof at the time of trial.

7 123. The above-described actions were perpetrated and/or ratified by
8 managing agents, officers or directors of Defendant. These acts were done with
9 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. Such acts
10 were deliberate, intentional, despicable in character and warrant the imposition of
11 punitive damages within the meaning of California Civil Code section 3294 and in a
12 sum sufficient to punish and deter Defendants' future conduct.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For general and special damages according to proof;
2. For pre-judgment and post-judgment interest on all damages awarded;
3. For exemplary and punitive damages in an amount according to proof;
4. For reasonable attorneys' fees;
5. For costs of suit incurred;
6. For all civil penalties as permitted by law;
7. For medical expenses and related items of expense, according to proof;
8. For such other and further relief as the Court may deem just and proper.

ADDITIONALLY, Plaintiff demands trial of this matter by jury. The amount demanded exceeds \$25,000.00 (Government Code § 72055).

Dated: May 15, 2023

MIRACLE MILE LAW GROUP, LLP

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